

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy hereby gives Notice of Intended Action to amend Chapter 201, "Practice of Physical Therapists and Physical Therapist Assistants," Chapter 206, "Licensure of Occupational Therapists and Occupational Therapy Assistants," and Chapter 208, "Practice of Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

These proposed amendments would update practice requirements for physical and occupational therapy licensure.

Any interested person may make written comments on the proposed amendments no later than January 6, 2009, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail jmanning@idph.state.ia.us.

A public hearing will be held on January 6, 2009, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148A, 148B and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 645—201.3(147,148A):

645—201.3(147,148A) Prohibited agreements and undue influence.

201.3(1) Definitions.

"Kickback" includes, but is not limited to, monetary and nonmonetary inducements or favors, payments or other compensation made directly or indirectly by a prescriber of physical therapy services for use by a physical therapist.

"Prohibited agreement" means a direct or indirect agreement or arrangement between a prescriber of physical therapy services and a physical therapist providing a premium, "kickback," fee-splitting, or special charge as compensation or inducement for placement of business or solicitation of patronage to the physical therapist.

201.3(2) Undue influence.

a. A physical therapist shall not accept professional employment or share or receive compensation in any form, including wages or commissions, arising out of or incidental to the physical therapist's professional activities from a prescriber of physical therapy services or any other person or partnership or corporation in which a prescriber of physical therapy services has a proprietary or beneficial interest sufficient to permit the prescriber of physical therapy services to directly or indirectly exercise supervision or control over the physical therapist in the physical therapist's professional responsibilities and duties.

b. The prohibition in paragraph "a" shall not apply to a physical therapist until January 1, 2011.

201.3(3) Freedom of choice. A physical therapist shall not directly or indirectly enter into any agreement or arrangement which negates a patient's freedom of choice of physical therapy services.

201.3(4) Prohibited agreements. A physical therapist shall not participate in a prohibited agreement with any prescriber of physical therapy services in exchange for recommending, promoting, accepting, or promising to accept the professional physical therapy services of a physical therapist.

201.3(5) Lease agreements. A physical therapist shall not lease space under any of the following conditions:

- a. The space would be leased from a prescriber of physical therapy services or a group, corporation, association, or organization of such prescribers on a percentage-of-income or volume basis;
- b. The space would be leased from a group, corporation, association, or organization in which a prescriber of physical therapy services has majority control or has directly or indirectly a majority beneficial or proprietary interest on a percentage-of-income basis; or
- c. The rent is not reasonable according to commonly accepted standards in the community in which the physical therapy practice will be located.

ITEM 2. Amend rule **645—206.1(147)**, definition of “Occupational therapy screening,” as follows:
“*Occupational therapy screening*” means a brief process which is directed by an occupational therapist in order for the occupational therapist to render a decision as to whether the individual warrants further, in-depth evaluation and which includes:

1. Assessment of the medical and social history of an individual;
2. Observations related by that individual’s caregivers; or
3. Observations or nonstandardized tests, or both, administered to an individual by the occupational therapist or an occupational therapy assistant under the direction of the occupational therapist.

Nothing in this definition shall be construed to prohibit licensed occupational therapists and occupational therapy assistants who work in preschools or school settings from providing short-term interventions, ~~not to exceed four months~~, to children prior to an evaluation, not to exceed 16 sessions per concern per school year, in accordance with state and federal educational policy.

ITEM 3. Adopt the following **new** rule 645—208.3(147,148B):

645—208.3(147, 148B) Prohibited agreements and undue influence.

208.3(1) Definitions.

“*Kickback*” includes, but is not limited to, monetary and nonmonetary inducements or favors, payments or other compensation made directly or indirectly by a prescriber of occupational therapy services for use by an occupational therapist.

“*Prohibited agreement*” means a direct or indirect agreement or arrangement between a prescriber of occupational therapy services and an occupational therapist providing a premium, “kickback,” fee-splitting, or special charge as compensation or inducement for placement of business or solicitation of patronage to the occupational therapist.

208.3(2) Undue influence.

a. An occupational therapist shall not accept professional employment or share or receive compensation in any form, including wages or commissions, arising out of or incidental to the occupational therapist’s professional activities from a prescriber of occupational therapy services or any other person or partnership or corporation in which a prescriber of occupational therapy services has a proprietary or beneficial interest sufficient to permit the prescriber of occupational therapy services to directly or indirectly exercise supervision or control over the occupational therapist in the occupational therapist’s professional responsibilities and duties.

b. The prohibition in paragraph “a” shall not apply to an occupational therapist until January 1, 2011.

208.3(3) Freedom of choice. An occupational therapist shall not directly or indirectly enter into any agreement or arrangement which negates a patient’s freedom of choice of occupational therapy services.

208.3(4) Prohibited agreements. An occupational therapist shall not participate in a prohibited agreement with any prescriber of occupational therapy services in exchange for recommending, promoting, accepting, or promising to accept the professional occupational therapy services of an occupational therapist.

208.3(5) Lease agreements. An occupational therapist shall not lease space under any of the following conditions:

- a.* The space would be leased from a prescriber of occupational therapy services or a group, corporation, association, or organization of such prescribers on a percentage-of-income or volume basis;
- b.* The space would be leased from a group, corporation, association, or organization in which a prescriber of occupational therapy services has majority control or has directly or indirectly a majority beneficial or proprietary interest on a percentage-of-income basis; or
- c.* The rent is not reasonable according to commonly accepted standards in the community in which the occupational therapy practice will be located.